

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application Nos. 364, 2294, 2295 & 2296 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BAPUSINGH SAYABA

Versus

AJAY KUMAR

Appearance:

1. Special Civil Application No. 364 of 2001
MR PH PATHAK for Petitioners
MRS SIDDHI D TALATI for Respondent No. 1, 2
 2. Special Civil ApplicationNo 2294 of 2001
MR PH PATHAK for Petitioners
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/05/2001

COMMON ORAL JUDGEMENT

#. These petitions can be finally disposed of at the admission stage. Shri PH Pathak, learned counsel for the

petitioners and Mrs.Siddhi Talati, learned counsel for the respondent have been heard.

#. The brief facts giving rise to these petitions are as under :

Disputes having arisen between the employees and the employer, it was sought to be resolved through conciliation proceedings ended in failure. The Conciliation Officer submitted failure report to the appropriate Government on 15-5-2000 vide Annexure-'B'. The appropriate Government considered the failure report and rejected the reference through Annexure-'C' dated 28-7-2000. The communication reads as under :

"The dispute is raised after six years without any justifiable reason"

#. The contention of Shri Pathak is that, on grounds of limitation the reference could not be rejected by the appropriate Government. He has placed reliance upon the Apex Court's verdict in AJAIB SING v. SIRHIND COOP. MARKETING-CUM-PROCESSING SERVICE SOCIETY LIMITED (1999)6 S.C.C. 82. In this case, it was held in Para-10 as under:

'We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 33-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the judges presiding over the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunal under the Act.'

It is, thus, apparent from the impugned order that the appropriate Government refused to make reference to the Labour Court/Industrial Tribunal only on the ground of delay. Since, no limitation is prescribed for making

reference, the view of the appropriate Government is contrary to law. On receipt of the failure report, the appropriate Government was required to proceed as contemplated under sec.12(5) of the Industrial Disputes Act, which provides that, 'if, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, Labour Court, Tribunal or National Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reason therefor.' Thus, under sec.12(5), if the appropriate Government is satisfied that there is a case for reference it has to make reference. While doing so, the appropriate Government is further obliged to keep in mind the provisions of sec.10 of the Industrial Disputes Act, which provides that, 'where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer inter alia to the authorities mentioned in this section. Thus, while considering the failure report, the appropriate Government has to come to prima facie satisfaction that there is a case for reference. For this exercise, the appropriate Government has not taken into consideration the charter of demand submitted by the workmen before the Conciliation Officer, which also forms part of the failure report. The appropriate Government also lost sight of the provisions of sec.10, because there is no mention in the impugned order that the appropriate Government was of opinion that any industrial dispute exists or is apprehended. Unless, these provisions were kept in mind, reference consequent upon the failure report could not be refused merely on grounds of delay and limitation.

#. In the result, the impugned order can not be sustained. The petitions, therefore, succeed and are hereby allowed. The impugned order Annexure-'C' is quashed and set aside. The appropriate Government is directed to consider the failure report in the light of sec.12(5) read with sec.10 of the Industrial Disputes Act and shall proceed to pass orders in accordance with these sections within two weeks from the date of presentation of copy of this judgment. No order as to cost.

May 4, 2001. [D.C. Srivastava, J.]

/sakkaf